

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

BLACKBOARD, INC.,

*Plaintiff,*

v.

DESIRE2LEARN, INC.,

*Defendant.*

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Civil Action No. 9:06-CV-00155-RHC

JUDGE RON CLARK

**ORDER**

Before the court is Defendant Desire2Learn's generous attempt to assist the court in organizing the blizzard of paper the parties have produced since October 4, 2007.<sup>1</sup> Desire2Learn has thoughtfully listed all pending dispositive motions in this case, as well as their associated responses, replies, and sur-replies. What Desire2Learn failed to do was compute the total number of pages these motions comprise. Including attachments, the grand total for these twenty-four documents is well over 8000 pages.<sup>2</sup>

Of course, this total does not include ten other motions filed during this period, including four Motions to Strike and two Motions to Compel.<sup>3</sup> In fact, every time the court attempts to delve into the substantive issues of the six dispositive motions filed by the parties between

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<sup>1</sup>The chart is attached to this Order.

<sup>2</sup>Based on an eight hour, five day work week, even if the court had devoted all of its time between October 4 and November 30 to the task, it would still have had to read more than 25 pages an hour in order to burrow through the mountain of motions generated by the parties.

<sup>3</sup> See Docs. # 119, 121, 135, 137, 140, 141, 146, 168, 169, and 181. One of these motions requested expedited briefing.

October 4 and October 22<sup>4</sup>, it is almost immediately distracted by another discovery dispute<sup>5</sup> or petty squabble over page limits<sup>6</sup>.

Therefore, in order to secure the just, speedy and inexpensive determination of this action pursuant to Fed. R. Civ. P. 1, the court will deny all pending motions for summary judgment. Counsel on both sides are certainly skillful enough to focus the jury's attention on the key issues at trial, where the main disputes between the parties can be fully aired. Disposing of these motions in this manner will also free the court to devote the necessary time and attention to the pre-trial motions which will almost certainly be forthcoming, as well as the still-pending Motions to Strike and Compel.

IT IS THEREFORE ORDERED that the following motions are DENIED:

1. Blackboard's Motion For Partial Summary Judgment on Desire2Learn's Third Affirmative Defense of Express or Implied License/Patent Exhaustion [**Doc. # 118**];
2. Blackboard's Motion For Partial Summary Judgment on Desire2Learn's Affirmative Defense and Counterclaim of Inequitable Conduct [**Doc. # 124**];

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<sup>4</sup>This total excludes a seventh dispositive motion filed by Desire2Learn and struck per court order for exceeding the sixty page limit for dispositive motions. *See* Doc. # 148.

<sup>5</sup>*See* Doc. # 164 (granting Blackboard's Motion to Compel [**Doc. # 140**]); Doc. # 181 (yet another Motion to Compel filed by Blackboard on November 27).

<sup>6</sup>For an entertaining example, *see* Blackboard's recent Motion to Strike For Exceeding the Page Limits [**Doc. # 169**]. After having successfully argued on a previous occasion that Desire2Learn's final Motion For Summary Judgment should be struck for exceeding the page limits, because a prior filing in which Desire2Learn included both a dispositive motion and a response to one of Blackboard's dispositive motions should be treated as a motion, Blackboard later attempted to convince the court that the same document should now be treated as a response for purposes of the page limit on responses to dispositive motions. The court declined to accept this creative argument. *See* Doc. # 172.

3. Desire2Learn's Cross-Motion For Summary Judgment of License and Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) For Lack of Subject Matter Jurisdiction [**Doc. # 126**];
4. Desire2Learn's Motion For Summary Judgment on Unenforceability of U.S. Patent No. 6,988,138 [**Doc. # 127**];
5. Desire2Learn's Motion For Summary Judgment on Invalidity of U.S. Patent No. 6,988,138 [**Doc. # 129**]; and
6. Blackboard's Motion For Partial Summary Judgment on its Claims of Direct and Indirect Infringement of Claim 36 of the '138 Patent [**Doc. # 130**].

So **ORDERED** and **SIGNED** this **3** day of **December, 2007**.



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Ron Clark, United States District Judge

<b>Inequitable Conduct/Unenforceability Dispositive Motions</b>	<i>Filing Date and Time</i>	<i>Docket Number</i>
Blackboard Inc.'s Motion for Partial Summary Judgment on Desire2Learn's Affirmative Defense and Counterclaim of Inequitable Conduct	October 18, 2007 at 6:53 PM CDT	Doc. No. 124
<ul style="list-style-type: none"> <li>Desire2Learn's Response Opposing Blackboard's Motion for Partial Summary Judgment on Desire2Learn's Affirmative Defense and Counterclaim of Inequitable Conduct and Request for Oral Argument</li> </ul>	November 2, 2007 at 5:29 PM CDT	Doc. No. 144
<ul style="list-style-type: none"> <li>Blackboard's Reply Memorandum in Support of Its Motion for Partial Summary Judgment on Desire2Learn's Affirmative Defense and Counterclaim of Inequitable Conduct</li> </ul>	November 13, 2007 at 7:53 PM CST	Doc. No. 160
<ul style="list-style-type: none"> <li>Desire2Learn's Surreply Opposing Blackboard's Motion for Partial Summary Judgment on Desire2Learn's Affirmative Defense and Counterclaim of Inequitable Conduct and Request for Oral Argument,</li> </ul>	November 21, 2007 at 12:29 PM CST	Doc. No. 178
Desire2Learn's Motion for Summary Judgment on Unenforceability of U.S. Patent No. 6,988,138	October 19, 2007 at 7:31 PM CDT	Doc. No. 127
<ul style="list-style-type: none"> <li>Blackboard's Memorandum in Response to Desire2Learn's Motion for Summary Judgment of Unenforceability of U.S. Patent No. 6,988,138</li> </ul>	November 5, 2007 at 5:43 PM CST	Doc. No. 147
<ul style="list-style-type: none"> <li>Desire2Learn's Reply in Support of Its Motion for Summary Judgment on Unenforceability of U.S. Patent No. 6,988,138 and Request for Oral Argument</li> </ul>	November 13, 2007 at 10:16 PM CST	Doc. No. 162
<ul style="list-style-type: none"> <li>Blackboard's Surreply in Opposition to Desire2Learn's</li> </ul>	November 19, 2007 at 4:42 PM CST	Doc. No. 175

Motion for Summary Judgment of Unenforceability of U.S. Patent No. 6,988,138		
<b>Licensing/12(b)(1) Dispositive Motions</b>	<i>Filing Date and Time</i>	<i>Docket Number</i>
Blackboard's Motion for Partial Summary Judgment on Desire2Learn's Third Affirmative Defense of Express or Implied License/Patent Exhaustion	October 4, 2007 at 4:28 PM CDT	Doc. No. 118
<ul style="list-style-type: none"> <li>Desire2Learn's: (1) Response to Blackboard's Motion for Partial Summary Judgment on Desire2Learn's Third Affirmative Defense of Express or Implied License/Patent Exhaustion; (2) Cross-Motion for Summary Judgment of License; and (3) Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) for Lack of Subject Matter Jurisdiction</li> </ul>	October 19, 2007 at 2:09 PM CDT	Doc. No. 126
<ul style="list-style-type: none"> <li>Blackboard's Reply Memorandum in Support of Its Motion for Partial Summary Judgment on Desire2Learn's Third Affirmative Defense of Express or Implied License/Patent Exhaustion,</li> </ul>	October 31, 2007 at 3:28 PM CDT	Doc. No. 142
<ul style="list-style-type: none"> <li>Desire2Learn's Surreply to Blackboard's Motion for Partial Summary Judgment on Desire2Learn's Third Affirmative Defense of Express or Implied License/Patent Exhaustion,</li> </ul>	November 7, 2007 at 5:01 PM CST	Doc. No. 152
Desire2Learn's: (1) Response to Blackboard's Motion for Partial Summary Judgment on Desire2Learn's Third Affirmative Defense of Express or Implied License/Patent Exhaustion; (2) Cross-Motion for Summary Judgment of License; and (3) Motion	October 19, 2007 at 2:09 PM CDT	Doc. No. 126

<i>to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) for Lack of Subject Matter Jurisdiction</i>		
<ul style="list-style-type: none"> <li>Blackboard's Memorandum in Response to Desire2Learn's Cross-Motion for Summary Judgment of License and Motion to Dismiss for Lack of Subject Matter Jurisdiction Pursuant to Federal Rule of Civil Procedure 12(b)(1)</li> </ul>	November 5, 2007 at 4:52 PM CST	Doc. No. 145
<ul style="list-style-type: none"> <li>Desire2Learn's Reply in Support of Its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) for Lack of Subject Matter Jurisdiction and Its Motion for Summary Judgment of License</li> </ul>	November 13, 2007 at 5:24 PM CST	Doc. No. 159
<ul style="list-style-type: none"> <li>Blackboard's Sur-reply Memorandum in Opposition to Desire2Learn's Cross-Motion for Summary Judgment of License and Motion to Dismiss for Lack of Subject Matter Jurisdiction</li> </ul>	November 19, 2007 at 4:40 PM CST	Doc. No. 174
<b>Invalidity Dispositive Motion</b>		
Desire2Learn's Motion for Summary Judgment on Invalidity of U.S. Patent No. 6,988,138	October 22, 2007 at 4:54 PM CDT	Doc. No. 129
<ul style="list-style-type: none"> <li>Blackboard's Memorandum In Response to Desire2Learn's Motion for Summary Judgment on Invalidity of U.S. Patent No. 6,988,138</li> </ul>	November 6, 2007 at 5:34 PM CST	Doc. No. 149
<ul style="list-style-type: none"> <li>Desire2Learn's Reply in Support of Its Motion for Summary Judgment on Invalidity of U.S. Patent No. 6,988,138 and Request for Oral Argument</li> </ul>	November 14, 2007 at 4:48 PM CST	Doc. No. 165
<ul style="list-style-type: none"> <li>Blackboard's Surreply in Response to Desire2Learn's Reply in Support of Its Motion for Summary Judgment on Invalidity of U.S. Patent No.</li> </ul>	November 15, 2007 at 2:45 PM CST	Doc. No. 167

6,988,138		
<b>Infringement Dispositive Motion</b>	<i>Filing Date and Time</i>	<i>Docket Number</i>
Blackboard's Motion for Partial Summary Judgment on Its Claim of Direct and Indirect Infringement of Claim 36 of the '138 Patent	October 22, 2007 at 5:20 PM CDT	Doc. No. 130
<ul style="list-style-type: none"> <li>Desire2Learn's Response to Blackboard's Motion for Partial Summary Judgment on its Claim of Direct and Indirect Infringement of Claim 36 of the '138 Patent and Request for Oral Argument</li> </ul>	November 6, 2007 at 9:09 PM CST	Doc. No. 151
<ul style="list-style-type: none"> <li>Blackboard's Reply Memorandum in Support of Its Motion for Partial Summary Judgment on Its Claim of Direct and Indirect Infringement of Claim 36 of the '138 Patent</li> </ul>	November 19, 2007 at 8:50 PM CST	Doc. No. 176
<ul style="list-style-type: none"> <li>Desire2Learn's Surreply in Support of its Response to Blackboard's Motion for Partial Summary Judgment on its Claim of Direct and Indirect</li> </ul>	November 26, 2007 at 5:41 PM CST	Doc. No. 180